

STATE OF MICHIGAN
IN THE SUPREME COURT

RAISE THE WAGE MI,

Plaintiff,

Case No. 166312

v

BOARD OF STATE CANVASSERS,

Defendant.

_____ /

GOODMAN ACKER, PC
Mark Brewer (P35661)
Rowan Conybeare (P86571)
17000 W. Ten Mile Road
Southfield, MI 48075
(248) 483-5000
mbrewer@goodmanacker.com
Attorneys for Plaintiff

Heather Meingast (P55439)
Erik Grill (P64713)
Department of the Attorney General
PO Box 30212
Lansing, MI 48909
(517) 335-0741
MeingastH@michigan.gov
Attorneys for Defendant

HONIGMAN LLP
Andrea L. Hansen (P47358)
Melissa Malerman (P58884)
222 North Washington Square, Suite 400
Lansing, MI 48933
(517) 377-0709
ahansen@honigman.com
Attorneys for Proposed Intervening Defendant
Michigan Opportunity

**PROPOSED INTERVENING DEFENDANT MICHIGAN OPPORTUNITY'S MOTION
TO INTERVENE**

NOW COMES Proposed Intervening Defendant Michigan Opportunity, through its attorneys HONIGMAN LLP, and for its Motion to Intervene states:

1. Michigan Opportunity is a duly formed ballot question committee that is opposed to the initiative petition circulated and filed by Raise the Wage MI (the “Petition”).
2. On July 26, 2022, Raise the Wage MI filed the Petition with the Bureau of Elections.
3. On August 10, 2023, the Bureau of Elections released the Petition sample and established a challenge deadline of September 1, 2023.
4. On September 1, 2023, Michigan Opportunity filed a timely challenge to the Petition with the Board of State Canvassers (the “Board”).
5. On October 20, 2023, the Board held a public hearing to determine whether to certify the Petition. Michigan Opportunity participated in the hearing and requested the Board to deny certification.
6. The Board deadlocked (voting 2-2), resulting in the Petition not being certified for the ballot.
7. On October 30, 2023, Raise the Wage MI filed a Complaint for Mandamus, followed by a Brief in Support of Complaint for Mandamus on October 31, 2023.
8. Michigan Opportunity seeks leave to intervene as a party defendant.
9. Intervention of right requires three elements: (1) a timely application; (2) a showing that the applicant’s interests in the case are or may be inadequately represented by named parties; and (3) the disposition of the matter may impair or impede the applicant’s ability to protect its own interests. MCR 2.209(A); *Oliver v State Police Dep’t*, 160 Mich App 107, 115-16; 408 NW2d 436 (1987).

10. Michigan Opportunity's Motion to Intervene is timely filed. It is being filed within the time limits imposed by the Court for responding to the Complaint for Mandamus and prior to the Defendant filing its Answer or Brief in Response to Plaintiff's Complaint for Mandamus. See MCR 2.209; *Precision Pipe & Supply, Inc v Meram Constr, Inc*, 195 Mich App 153, 156; 489 NW2d 166 (1992); *D'Agostini v Roseville*, 396 Mich 185, 187-88; 240 NW2d 252 (1976).

11. Michigan Opportunity filed a challenge and opposed certification of the Petition before the Board, appeared and participated in the proceedings before the Board, and has endeavored to ensure that the Petition is not impermissibly placed on the ballot.

12. MCR 2.209(A) provides that a right of intervention exists "when the applicant claims an interest relating to the...transaction which is the subject of the action and is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest..." Michigan Opportunity easily satisfies these prerequisites for intervention as of right. *D'Agostini*, 396 Mich at 190.

13. Michigan Opportunity, as an opponent of the Petition, will almost certainly make arguments opposing certification of the Petition for the November 2024 general election ballot that the named Defendant, a state board, will not and cannot make given it deadlocked on the issue. Michigan Opportunity therefore satisfies the minimal burden that MCR 2.209(A) imposes to demonstrate that the named parties may not adequately protect its interests. See *Vestevich v West Bloomfield Twp*, 245 Mich App 759, 762; 630 NW2d 646 (2001); *Precision Pipe & Supply, Inc*, 195 Mich App at 156; *Karrip v Cannon Twp*, 115 Mich App 726, 731; 321 NW2d 690 (1982); *Mullinix v Pontiac*, 16 Mich App 110, 115; 167 NW2d 856 (1969).

14. Michigan Opportunity is filing concurrent with this Motion its Answer to Plaintiff's Complaint for Mandamus. Exhibit 1, Proposed Intervening Defendant Michigan Opportunity's Answer and Affirmative Defenses to Plaintiff's Complaint for Mandamus. Michigan Opportunity will file its Brief in Opposition to Plaintiff's Complaint for Mandamus within the filing deadlines imposed on Defendant and thus will not unduly delay (or delay at all) adjudication of this action.

15. Even if this Court determines that there is no right of intervention here, this Court should exercise its discretion and grant permission to intervene. See, e.g. *Vestevich*, 245 Mich App at 762-763. Given that Michigan Opportunity has sought from the outset to prevent improper certification of the Petition, its defense and the main action clearly have common questions of law. MCR 2.209(B) provides for permissive intervention when "an applicant's claim or defense and the main action have a question of law or fact in common."

16. Michigan courts routinely allow intervention by ballot question committees supporting or opposing initiative petitions. See, e.g. *Promote the Vote 2022 v Bd of State Canvassers*, __ Mich __; 979 NW2d 188 (2022); *Reproductive Freedom For All v Bd of State Canvassers*, __ Mich __; 978 NW2d 854 (2022); *Unlock Mich v Bd of State Canvassers*, 507 Mich 1015; 961 NW2d 211 (2021); *Mich Opportunity v Bd of State Canvassers*, 503 Mich 918; 920 NW2d 137 (2018); *Protecting Mich Taxpayers v Bd of State Canvassers*, __ Mich __; 911 NW2d 189 (2018); *Mich United Conservation Clubs v Secretary of State*, 246 Mich App 82; 630 NW2d 376 (2001), rev'd on other grounds 464 Mich 359 (2001); *Mich Civil Rights Initiative v Bd of State Canvassers*, 268 Mich App 506; 708 NW2d 139 (2005).

17. Counsel for both Plaintiff and Defendant have advised counsel for Michigan Opportunity that they do not oppose this request for intervention.

18. For the foregoing reasons, Michigan Opportunity respectfully requests that its Motion to Intervene as a party Defendant be granted.

Respectfully submitted,

HONIGMAN LLP
Attorneys for Proposed Intervening Defendant Michigan
Opportunity

Dated: December 4, 2023

By: /s/ Andrea Hansen
Andrea L. Hansen (P47358)
222 North Washington Square, Suite 400
Lansing, MI 48933

CERTIFICATE OF SERVICE

I hereby certify that on December 4, 2023, I electronically filed the foregoing document with the Clerk of the Court using the ECF system, which will send notification of such filing to all attorneys of record in this matter registered with the ECF system.

/s/ Diane Pohl

Exhibit 1

**STATE OF MICHIGAN
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BOARD OF STATE CANVASSERS,

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GOODMAN ACKER, PC
Mark Brewer (P35661)
Rowan Conybeare (P86571)
17000 W. Ten Mile Road
Southfield, MI 48075
(248) 483-5000
mbrewer@goodmanacker.com
Attorneys for Plaintiff

Heather Meingast (P55439)
Erik Grill (P64713)
Department of the Attorney General
PO Box 30212
Lansing, MI 48909
(517) 335-0741
MeingastH@michigan.gov
Attorneys for Defendant

HONIGMAN LLP
Andrea L. Hansen (P47358)
Melissa Malerman (P58884)
222 North Washington Square, Suite 400
Lansing, MI 48933
(517) 377-0709
ahansen@honigman.com
Attorneys for Proposed Intervening Defendant
Michigan Opportunity

**PROPOSED INTERVENING DEFENDANT MICHIGAN OPPORTUNITY'S ANSWER
AND AFFIRMATIVE DEFENSES TO PLAINTIFF'S COMPLAINT FOR MANDAMUS**

ORAL ARGUMENT REQUESTED

NOW COMES Proposed Intervening Defendant Michigan Opportunity, by and through its attorneys Honigman LLP, and for its Answer and Affirmative Defenses to the Complaint for Mandamus filed by Plaintiff Raise the Wage MI, states as follows:

INTRODUCTION

1. The Board of State Canvassers is at it again. On October 20, 2023, the BOSC failed to perform its ministerial duty to certify Raise the Wage MI's petition for the ballot. By a vote of 2-2, the BOSC refused to certify a petition for which it had previously unanimously approved both the summary and form, and which the nonpartisan, professional staff of the Bureau of Elections had determined collected sufficient signatures.

ANSWER: Michigan Opportunity denies as untrue the allegations set forth in paragraph 1 in the form stated. Michigan Opportunity admits that the Board of State Canvassers voted 2-2 with respect to Raise the Wage MI's request for certification of its petition.

PARTIES AND JURISDICTION

2. Plaintiff Raise the Wage MI is a registered ballot question committee under the Michigan Campaign Finance Act and the sponsor of an initiative petition to, among other things, raise the minimum wage (Exhibit 1). It is aggrieved by the determination made by the Defendant Board of State Canvassers on October 20, 2023, not to certify its petition.

ANSWER: Michigan Opportunity denies that Raise the Wage MI's initiative petition would raise the minimum wage, because that is untrue with respect to the thousands of people for whom the minimum wage would in fact be decreased. Michigan Opportunity admits that Raise the Wage MI is registered as a ballot question committee and that the Board of State Canvassers did not certify its petition.

3. Defendant BOSC is a constitutional body responsible for, *inter alia*, canvassing and validating signatures on constitutional amendment, statutory initiative, and referendum petitions, MCL 168.476.

ANSWER: Michigan Opportunity admits the allegations set forth in Paragraph 3.

4. This Court has jurisdiction over Raise the Wage MI's mandamus complaint under MCL 168.479(2) and MCR 7.303(B)(6).

ANSWER: Michigan Opportunity admits the allegations set forth in paragraph 4.

FACTUAL ALLEGATIONS

Raise the Wage MI's Petition Summary Is Prepared and Approved

5. In order to preempt challenges to a petition summary as misleading or deceptive, the Michigan Election Law provides a mechanism for a summary to be prepared by the Director of Elections and approved by the BOSC before a petition is circulated:

(1) A person who circulates a petition . . . may, before circulating any petition, submit the summary of the purpose of the proposed amendment or question proposed . . . to the board of state canvassers for approval as to the content of the summary. The board of state canvassers must issue an approval or rejection of the content of the summary not more than 30 days after the summary is submitted. . . .

(2) If a person submits the summary of the purpose of the proposed amendment or question proposed as provided in subsection (1), all of the following apply:

(a) The summary of the purpose of the proposed amendment or question proposed must be prepared by the director of elections, with the approval of the board of state canvassers.

MCL 168.482b(1), (2)(a).

ANSWER: Michigan Opportunity answers that MCL 168.482b speaks for itself.

6. If the summary is approved by the BOSC, no challenge may thereafter be made that it is misleading or deceptive;

The board of state canvassers *may not consider* a challenge to the sufficiency of a submitted petition on the basis of the summary being misleading or deceptive if that summary was approved before circulation of the petition.

MCL 168.482b(1) (emphasis added). This language is absolute and permits of no exceptions.

ANSWER: Michigan Opportunity answers that the statute cited speaks for itself. In further answer, the statutory provision cited only applies to the version of the petition from which the summary of purpose was prepared, which is not the case here.

7. Raise the Wage MI used this process. On December 22, 2021, Raise the Wage MI submitted a proposed summary. The Director of Elections prepared a summary that was reviewed by the BOSC at its meeting on January 19, 2022, where there was ample opportunity for public input and comment. The summary was unanimously approved by the BOSC that day. *See* Board of State Canvassers, Meeting Minutes (January 19, 2022), available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/BSC-Meeting-Minutes/Jan-19-22-BSC-Meeting-Minutes.pdf?rev=18c5c028324545b2b6721e7ceeda2bf7&hash=76070B5A61DBB0F0A5797F8E42DFB241>.

ANSWER: Michigan Opportunity admits that the Board of State Canvassers approved a summary for the version of the petition that was submitted by Raise the Wage MI on December 22, 2021.

8. No one ever appealed the BOSC's approval of the summary.

ANSWER: Michigan Opportunity neither admits nor denies the allegations set forth in paragraph 8 because it is without knowledge or information sufficient to form a belief as to their truth.

9. No one ever sought reconsideration of the BOSC's approval of the summary.

ANSWER: Michigan Opportunity neither admits nor denies the allegations set forth in paragraph 9 because it is without knowledge or information sufficient to form a belief as to their truth.

10. In reliance on the BOSC's approval, that approved summary was used on Raise the Wage MI's petitions.

ANSWER: Michigan Opportunity neither admits nor denies the allegations set forth in paragraph 10 because it is without knowledge or information sufficient to form a belief as to their truth. In further answer, to the extent Raise the Wage MI relied on a summary prepared and approved based on a prior version of a petition, that reliance was misplaced.

Raise the Wage MI's Petition Form Is Reviewed and Approved

11. To assist ballot proposal sponsors in avoiding disqualification due to defects in their petition forms, the BOSC has also established a process for reviewing and approving the form of ballot proposal petitions before they are circulated. *See* Department of State, Bureau of Elections, *Sponsoring a Statewide Initiative, Referendum or Constitutional Amendment Petition* (February 2022), pp 9-10, available at https://www.michigan.gov/-/media/Project/Websites/sos/08delrio/Initiative_and_Referendum_Petition_Instructions_201920_061119.pdf?rev=298aaf6a87224081a047796dc17a9d07.

ANSWER: Michigan Opportunity admits that there is an optional preliminary preapproval as to form process that a sponsor may avail itself of in order to “reduce” the chance of errors in the formatting of a petition. In further answer, Michigan Opportunity states that this is a nonbinding advisory process that is limited in scope.

12. The Bureau of Elections ("BOE") and BOSC urge ballot proposal sponsors to submit their petitions for approval as to form:

E. Optional Pre-Circulation “Approval as To Form” Process

Sponsors of petitions to initiate legislation, amend the constitution, or invoke the right of referendum are urged to submit a proof copy of the petition to the Board of State Canvassers for approval as to form prior to the circulation of the petition.

Best Practice: Although Michigan election law does not require the sponsor of a statewide proposal petition to seek pre-approval of the petition form, *such approval greatly reduces the risk that signatures collected on the form will be ruled invalid due to formatting defects.*

Id (emphasis added).

ANSWER: Michigan Opportunity answers that the Manual cited speaks for itself.

13. Virtually all ballot proposal sponsors take advantage of this process in order to minimize the risk that, after a petition drive spends millions of dollars to collect hundreds of thousands of signatures, all of that investment will be wasted due to an avoidable defect in the petition form.

ANSWER: Michigan Opportunity neither admits nor denies the allegations set forth in paragraph 13 because it is without knowledge or information sufficient to form a belief as to their truth.

14. Raise the Wage MI used this process. On February 9, 2022, Raise the Wage MI submitted its petition for routine approval as to form at the BOSC meeting on February 11, 2022.

ANSWER: Michigan Opportunity admits that Raise the Wage MI submitted a version of its petition for approval as to form.

15. At the meeting on February 11, 2022, BOE staff reported that they had reviewed the petition, concluded that its form conformed to Michigan law, and recommended that the form be approved.

ANSWER: Michigan Opportunity neither admits nor denies the allegations set forth in paragraph 15 because it is without knowledge or information sufficient to form a belief as to their truth.

16. An opponent of the petition, Michigan Opportunity, opposed approval as to form, objecting, *inter alia*, to the union label on the petition because its text was not in 8-point type.

ANSWER: Michigan Opportunity admits that it opposed approval as to form for several reasons, including the size of the union label.

17. Two members of the BOSC stated that they were refusing to approve the petition form on the basis of this objection to the size of the text contained within the union label.

ANSWER: Michigan Opportunity admits that two members of the Board of State Canvassers denied preapproval as to form.

18. As a result, the BOSC deadlocked 2-2 on the motion to approve the petition form, meaning that the BOSC determined that the petition form was not approved.

ANSWER: Michigan Opportunity admits that the Board of State Canvassers deadlocked with respect to preapproval as to form and, therefore, it was not approved.

19. Based on a complaint filed by Raise the Wage MI, this Court promptly overruled the BOSC on the union label issue on March 21, 2022. *Raise the Wage MI v Bd of State Canvassers*, 509 Mich 876; 970 NW2d 677 (2022).

ANSWER: Michigan Opportunity answers that this Court's decision speaks for itself.

20. On March 10, 2022, Raise the Wage MI submitted a petition proof with a revised union logo. *See* Exhibit 1 (petition proof date-stamped March 10, 2022).

ANSWER: Michigan Opportunity admits the allegations set forth in paragraph 20 and states further that Raise the Wage MI made additional revisions to its petition in response to objections made by Michigan Opportunity at the prior hearing.

21. In the wake of this Court's decision in *Raise the Wage MI*, the BOSC met on March 23, 2022, and unanimously approved the form of the petition submitted by Raise the Wage

MI on March 10, 2022. *See* Board of State Canvassers, Meeting Minutes (March 23, 2022), available at <https://www.michigan.gov/sos/-/media/Project/Websites/sos/BSC-Meeting-Minutes/Signed-03-23-2022-Meeting-Minutes.pdf?rev=527a925174c241d290d707340a078918&hash=C0E121360E1F4417C6E43AF389771F26>.

ANSWER: Michigan Opportunity admits that the Board of State Canvassers preliminarily approved the form of a version of the Raise the Wage MI petition.

22. The BOSC decision of March 23, 2022, approving the form of the petition, was never appealed.

ANSWER: Michigan Opportunity neither admits nor denies the allegations set forth in paragraph 22 because it is without knowledge or information sufficient to form a belief as to their truth. In further answer, it is unclear whether there is any mechanism for an appeal of this nonbinding advisory approval provided as a courtesy by the Board.

23. No one ever sought reconsideration of the BOSC's decision on March 23, 2022, approving the form of the petition.

ANSWER: Michigan Opportunity neither admits nor denies the allegations set forth in paragraph 23 because it is without knowledge or information sufficient to form a belief as to their truth. In further answer, there is no mechanism for a request for reconsideration of this nonbinding advisory approval provided as a courtesy by the Board.

24. In reliance on the BOSC approval of its petition form, Raise the Wage MI used the BOSC-approved form for its petition.

ANSWER: Michigan Opportunity neither admits nor denies the allegations set forth in paragraph 24 because it is without knowledge or information sufficient to form a belief as to their truth.

*Raise the Wage MI Circulates Its Petition, and Collects and Files
Nearly 570,000 Signatures*

25. With an approved summary and petition form in hand, Raise the Wage MI began collecting signatures.

ANSWER: Michigan Opportunity admits that Raise the Wage MI circulated a petition (actually more than one version) for signatures. Michigan Opportunity states further that Raise the Wage MI circulated at least 3 versions of a petition and only one version was preliminarily approved as to form and none of them had a summary that was approved, so denies any allegations to the contrary as untrue.

26. Raise the Wage MI's proposal to raise the minimum wage to \$15/hour, index it for inflation, and apply it to tipped workers was very popular.

ANSWER: Michigan Opportunity denies as untrue the allegations set forth in paragraph 26.

27. After only five months of collecting signatures, Raise the Wage MI filed 567,934 signatures on July 26, 2022. *See Exhibit 2.*

ANSWER: Michigan Opportunity admits that Raise the Wage MI filed 567,934 signatures on July 26, 2022, but denies as untrue any suggestion that all of these signatures were valid.

*The Raise the Wage MI Petition Signatures Are Reviewed and the Bureau
of Elections Staff Recommends Certification*

28. The BOE staff conducted its standard review of the petition signatures. Michigan Opportunity filed challenges, to which Raise the Wage MI responded.

ANSWER: Michigan Opportunity admits the allegations set forth in paragraph 28.

29. After reviewing the signatures and considering the challenges and responses, the nonpartisan, professional staff at the BOE recommended certification of Raise the Wage MI's petition. See Exhibit 2.

ANSWER: Michigan Opportunity answers that the Staff Report speaks for itself and, further, that Staff did not provide any recommendations regarding the legal challenges raised by Michigan Opportunity, leaving that determination to the Board's discretion.

The BOSC Meets and Fails to Certify

30. On October 20, 2023, the BOSC met to consider the BOE staff recommendation to certify the petition.

ANSWER: Michigan Opportunity admits that the Board of State Canvassers met on October 20, 2023 to consider whether to certify the Raise the Wage MI petition, but denies the remainder of the allegations in paragraph 30 as untrue in the form stated.

31. After listening to objections from Michigan Opportunity and Raise the Wage MI's responses, a motion was made to certify. That motion failed 2-2.

ANSWER: Michigan Opportunity admits that the Board of State Canvassers deadlocked 2-2 on whether to certify the Raise the Wage MI petition, resulting in a denial of certification.

**COUNT I: MANDAMUS — THE BOARD OF STATE CANVASSERS
SHOULD BE ORDERED TO CERTIFY THE PETITION**

32. Plaintiff incorporates the previous paragraphs as if fully set forth herein.

ANSWER: Michigan Opportunity incorporates by reference its answers to paragraphs 1-31 as if fully set forth herein.

33. A writ of mandamus is issued by a court to compel public officers to perform a clear legal duty. *Jones v Dep't of Corrections*, 468 Mich 646, 658; 664 NW2d 717 (2003) (*en*

banc). “Mandamus is the appropriate remedy for a party seeking to compel action by election officials.” *Attorney General v Bd of State Canvassers*, 318 Mich App 242, 248; 896 NW2d 485 (2016) (*per curiam*) (internal quotation marks and citation omitted).

ANSWER: Michigan Opportunity answers that these cases speak for themselves and denies as untrue that Raise the Wage MI is entitled to the extraordinary relief of mandamus.

34. To be entitled to a writ of mandamus, a plaintiff must show that: “(1) the plaintiff has a clear, legal right to performance of the specific duty sought, (2) the defendant has a clear legal duty to perform, (3) the act is ministerial, and (4) no other adequate legal or equitable remedy exists that might achieve the same result.” *Rental Props Owners Ass’n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 518; 866 NW2d 817 (2014) (*per curiam*).

ANSWER: Michigan Opportunity answers that this case speaks for itself and denies as untrue that Raise the Wage MI is entitled to the extraordinary relief of mandamus.

35. Defendant has a clear legal and ministerial duty grounded in statutory law and the numerous precedents of this Court to certify the Raise the Wage MI petition. *See, e.g., Reproductive Freedom for All v Bd of State Canvassers*, 510 Mich 894, 894-895; 978 NW2d 854 (2022) (where the form of a petition is sufficient and there are enough signatures, “the Board . . . has a clear legal duty to certify the petition”); *Unlock Mich v Bd of State Canvassers*, 507 Mich 1015, 1015; 961 NW2d 211 (2021) (where the Board previously approved the form of the petition and there are sufficient signatures, “the Board has a clear legal duty to certify the petition”); *Citizens for Protection of Marriage v Bd of State Canvassers*, 263 Mich App 487, 493; 688 NW2d 538 (2004) (*per curiam*) (“[T]he Board approved the form of the petition and there is no dispute that there are sufficient signatures. . . . [T]he Board was obligated to certify the petition.”).

ANSWER: Michigan Opportunity denies as untrue the allegations set forth in paragraph 35.

36. Under all of these authorities, Raise the Wage MI has a clear legal right to have its petition certified. *See id.*

ANSWER: Michigan Opportunity denies as untrue the allegations set forth in paragraph 36.

37. The BOSC's duties are ministerial and nondiscretionary under all of these authorities. *See id.*

ANSWER: Michigan Opportunity states that the legal authorities cited speaks for themselves and denies as untrue that the Board of State Canvassers had a ministerial and nondiscretionary duty to certify the Raise the Wage MI petition.

38. Raise the Wage MI has no other adequate legal or equitable remedy that might achieve the same results as certification, and mandamus is the proper remedy to obtain certification.

ANSWER: Michigan Opportunity denies as untrue that Raise the Wage MI is entitled to the extraordinary remedy of mandamus relief.

MANDAMUS SHOULD ISSUE AS SOON AS POSSIBLE

39. Plaintiff incorporates the previous paragraphs as if fully set forth herein.

ANSWER: Michigan Opportunity incorporates by reference its answers to paragraphs 1-38 as if fully set forth herein.

40. Election matters must be expedited. See MCR 7.213(C)(4); *see also Scott v Mich Dir of Elections*, 490 Mich 888, 888; 804 NW2d 119 (2011); *Ferency v Secretary of State*, 409 Mich 569, 599-600; 297 NW2d 544 (1980) (*per curiam*).

ANSWER: Michigan Opportunity admits that expedited but not immediate consideration is warranted given that Raise the Wage MI seeks certification of its petition for the November 2024 ballot.

AFFIRMATIVE DEFENSES

For its Affirmative Defenses to the Complaint for Mandamus, Plaintiff Michigan Opportunity, through its counsel, states as follows:

1. Raise the Wage MI has failed to state a cause of action for which relief may be granted.
2. There is no clear legal duty to act such that mandamus may issue against the Defendant.
3. The Raise the Wage MI petition sets forth a proposal that is ineligible for the ballot because it violates Const 1963, art 4, § 25, on its face.
4. The summary of purpose set forth on the Raise the Wage MI petition is misleading and false.
5. The Petition may have insufficient signatures for certification.
6. Plaintiff Michigan Opportunity reserves the right to add additional affirmative defenses as they become known.

CONCLUSION AND REQUEST FOR RELIEF

WHEREFORE, Michigan Opportunity respectfully requests that this Honorable Court:

1. Deny Raise the Wage MI's request for a writ of mandamus; and
2. Grant such other relief as is equitable and just.

Respectfully submitted,
HONIGMAN LLP

By: /s/ Andrea L. Hansen
Andrea L. Hansen (P47358)
222 N. Washington Sq. Suite #400
Lansing, MI 48933
(517) 377-0709

Dated: December 4, 2023

Attorneys for Michigan Opportunity